



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1088 (Modification)]

Certain Road Construction Machines and Components Thereof; Commission

Determination to Modify Remedial Orders; Termination of Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to adopt the findings of the presiding Administrative Law Judge (“ALJ”) in the Recommended Determination (“RD”) and modify the limited exclusion order (“LEO”) and cease and desist order (“CDO”) issued in this investigation. The modification proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on November 29, 2017, based on a complaint filed by Caterpillar Inc. of Peoria, Illinois and Caterpillar Paving Products, Inc. of Minneapolis, Minnesota (collectively, “Caterpillar”). *See* 82 FR 56625-26 (Nov. 29, 2017). The complaint, as supplemented, alleges

violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain road construction machines and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,140,693 (“the ’693 patent”), 9,045,871, and 7,641,419. *See id.* The notice of investigation names as respondents Wirtgen GmbH and Wirtgen Group Holding GmbH, both of Windhagen, Germany; Joseph Vögele AG of Ludwigshafen, Germany; and Wirtgen America, Inc. of Antioch, Tennessee (“Wirtgen America”) (collectively, “Wirtgen”). *See id.* The Office of Unfair Import Investigations was not a party to this investigation. *See id.*

On June 27, 2019, the Commission found a violation of section 337 in the underlying investigation based on the infringement of claim 19 of the ’693 patent, and issued an LEO against the infringing articles imported by Wirtgen and a CDO (collectively, “the remedial orders”) against Wirtgen America. *See* 84 FR 31910-11 (July 3, 2019).

On January 16, 2020, the Commission determined to institute a modification proceeding under 19 U.S.C. 1337(k) and 19 CFR 210.76 to adjudicate Wirtgen’s assertion that the remedial orders do not cover its redesigned series 1810 machines. *See* 85 FR 3944 (Jan. 23, 2020). On June 22, 2020, the ALJ issued the subject RD finding no infringement of claim 19 of the ’693 patent by Wirtgen’s redesigned series 1810 machines.

On July 2, 2020, both Caterpillar and Wirtgen filed comments concerning the RD’s findings, and on July 10, 2020, the parties filed responses to each other’s comments. Wirtgen challenges the legality of the modification proceeding and the RD’s finding that Wirtgen bears the burden of proof in such proceeding. In addition, Wirtgen faults the RD for construing a claim term, which, according to Wirtgen, is not permissible in the context of a modification

proceeding. Caterpillar disagrees with the RD's claim construction and the RD's finding that Wirtgen's redesigned machines do not infringe claim 19 of the '693 patent.

Having reviewed the record of the underlying violation investigation, as well as the record of the modification proceeding, including the RD and the parties' comments and responses thereto, the Commission has modified the LEO and CDO to include an explicit carve-out with respect to Wirtgen's redesigned series 1810 machines as stated in the accompanying Order. Specifically, the Commission affirms the RD's claim construction determination and noninfringement findings as to the redesigned series 1810 machine. The Commission rejects Wirtgen's challenges to the scope of the LEO and CDO, as issued, and Wirtgen's challenges to the propriety of this modification proceeding. The Commission's decisions are explained more fully in the Commission Opinion that accompanies this notice.

The Commission vote for this determination took place on August 31, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: August 31, 2020.

Lisa Barton,

Secretary to the Commission.